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No. 96-1927

In The

Supreme Court of the United States

October Term, 1996

CITY OF DALLAS, TEXAS, WILLARD ROLLINS, RICHARD HATLER,

Petitioners,

vs.

RICHARD KIRKS and JAN FORSYTH,

Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit

RESPONDENTS' BRIEF IN OPPOSITION

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LIST OF INTERESTED PARTIES

The parties to this proceeding are as follows:

City of Dallas	Defendant-Petitioner
Willard Rollins	Defendant-Petitioner
Richard Hatler	Defendant-Petitioner
Mack Vines	Defendant Only
Jan Forsyth	Plaintiff-Respondent
Richard Kirks	Plaintiff-Respondent
Douglas R. Larson	Attorney for Respondents
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Each of the respondents join in this brief in opposition.

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TO THE UNITED STATES SUPREME COURT:

Respondents Richard Kirks and Jan Forsyth, hereby request that the Supreme Court deny Petitioners', the City of Dallas, *et al.*, application for a Petition for Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit. The Court of Appeals Opinion is reported at 91 F.3d 769 (5th Cir. 1996). In opposition to this application for Writ of Certiorari, Respondents would respectfully show the court the following:

STATEMENT OF THE CASE

Primarily, Respondents would note that Petitioners' statement of facts materially misrepresents the evidence in this case and completely disregards in many material respects the jury's verdict and Fifth Circuit panel opinion. The Court should view with a critical eye the motivations of such tactics. Even though the Court does not have the Record in this case, Respondents to demonstrate that the Record supports the facts as they are reported here in this brief contains citations to the record. Respondents submit the following statement of facts which are consistent with the jury's verdict, as well as the district court and Fifth Circuit review of the same:

Respondent Jan Forsyth ("Forsyth") began her career in the Dallas Police Department as a secretary in 1973 and became a patrol officer in 1976 (R. Vol. 7, p. 126). Forsyth served four or five years in patrol before she was promoted to a plain clothes detective in the Burglary and Theft Unit (*Id.* at pp. 126-27). In approximately 1981, Forsyth moved into undercover work as a detective in the Narcotics Division (*Id.* at p. 127), and thereafter progressed to detective in the Intelligence Division in 1987.

Respondent Richard Kirks ("Kirks") began his police career in Fort Worth, Texas, in 1967 and joined the Dallas Police Department in 1970 (R. Vol. 8, p. 117). Kirks spent his first three or four years as a patrol officer (*Id.* at p. 118). Kirks

thereafter spent time as a detective in the District Attorney's Office, moved to the position of detective in the Narcotics Division in 1979, and ultimately progressed to the position of detective in the Intelligence Division in 1983 (*Id.* at pp. 118-19).

Beginning in March of 1988, Respondents' became immersed in a dispute between Respondents' informant, a well-connected Dallas lawyer named John Barr ("Barr"), and a politically influential Dallas business man named George Grogan ("Grogan") (R. Vol. 7, pp. 133-35; Exs. 18 and 32). Respondents' refusal to assist Barr and Grogan resulted in false charges being levelled against Respondents by Barr and Grogan, and an Internal Affairs investigation regarding the same (R. Vol. 8, pp. 144-45; Ex. 18). (Although the IAD Complaint only named Detective Forsyth, the actual investigation also involved Detective Kirks.) In the latter part of December, 1988 Forsyth was presented with the completed Internal Affairs investigation (hereinafter "IAD Packet"), which exonerated her of all wrongdoing (Plaintiffs' Ex. 18; Defendants Ex. 149).

After studying the IAD Packet, Kirks and Forsyth formed the good faith belief that several high ranking Dallas police officials, and particularly Petitioner Willard Rollins, had violated state and federal criminal wiretap laws (R. Vol. 7, pp. 149-51; R. Vol. 8, p. 140). Convinced that Dallas citizens had a right to know that the Dallas Police Department would not criminally investigate its own high ranking officials, the Respondents took action and exposed the matter to the public.

As a direct result of the Respondents' First Amendment speech, a newspaper article appeared on the front page of the February 5, 1989 Sunday edition of the *Dallas Morning News* (Ex. 32). The article precipitated a meeting on February 7, 1989 between the Respondents, their chain of command, and Petitioner Richard Hatler. During the meeting Petitioner Hatler articulated his displeasure of adverse publicity and informed

Respondents that he would hold them personally accountable for any more negative press articles. Petitioner Hatler instructed Respondents to curtail any further publicity. Critically, Petitioner Hatler directly "promised" Forsyth and Kirks that they would be transferred from the Intelligence Division if another newspaper article he could attribute to them appeared in the press (Ex. 130 at p. 5).

A second newspaper article appeared in the *Dallas Morning News* regarding the Respondents' allegations on February 14, 1989 (Ex. 36). Petitioners Rollins and Hatler effectuated the Respondents' involuntary transfer the next day, February 15, 1989 "effective as soon as possible" (Exs. 38 and 39). The Respondents were split up and involuntarily transferred back to where they had begun their respective careers with the Dallas Police Department — uniformed night patrol duty.

At trial, Petitioner Hatler proffered multiple reasons as to why he transferred the Respondents from Intelligence back to patrol, none of which he claimed had to do with free speech activity (R. Vol. 10, pp. 29-30, 34, 39-40, 48-49, 53-57, 63-66, 85-102). The jury fully heard, and fully rejected, Hatler's testimony. Hatler also testified that he knew it was unlawful to retaliatorily transfer police personnel for free speech activities, and he denied transferring Respondents for these reasons (R. Vol. 10 at pp. 85, 88-89, 101-103, 109). Noteworthy however, Hatler admitted that the event which precipitated the transfer was the second newspaper article (R. Vol. 10, pp. 139-140). Moreover, the jury found Hatler's actions in transferring Respondents so intentional, retaliatory and unconscionable, that they punished Hatler with exemplary damages.

Defendant Rollins testified that he had been long time friends with Petitioner Hatler (R. Vol. 11, pp. 127, 153-54), that he had read both newspaper articles prior to the transfer (*Id.* at pp. 133, 175), and that he was aware that the Respondents had some "complaints" against him as of the date of the transfer

(*Id.* at pp. 167, 173). Petitioner Rollins further testified that he had studied First Amendment law, he was fully aware that he could not retaliatory transfer police personnel for First Amendment activities, and he denied transferring Respondents for any improper or unlawful reasons (*Id.* at pp. 133, 141-46, 160). The jury fully heard Rollins' testimony and proffered explanations for the Respondents' transfer and categorically rejected the same. The jury found Rollins' actions in transferring Respondents so intentional, retaliatory and unconscionable that they punished Rollins with exemplary damages.

Contrary to Petitioners' arguments otherwise, Respondents fully and credibly established at trial that an involuntary transfer from an assignment as a detective in the Intelligence Unit back to uniformed night patrol duty was an adverse employment action that actually constituted a demotion, and that such involuntary transfers had been used before the Respondents' transfers as punishment within the Dallas Police Department.

After a long and thoughtful deliberation, the jury credited Respondents' version of the events, wholly rejected the testimony of Petitioners Rollins and Hatler, and rendered a verdict in favor of Respondents against both the individual petitioners and the City of Dallas.

At the trial in the district court the Respondents sought damages under two theories; one theory was First Amendment retaliation and the second was for violations of the Texas Whistleblower Act. The jury returned verdicts for the Respondents under both theories. The judgment of the Court of Appeals held the individual Petitioners, Hatler and Rollins liable under First Amendment and § 1983 principles. The judgment against the City of Dallas is based solely on Texas Statutory law, *i.e.* the Texas Whistleblower Act.

REASONS FOR DENYING THE WRIT

I.

PETITIONERS CANNOT ESTABLISH THAT EITHER THE DISTRICT COURT OR THE PANEL OPINION IS ERRONEOUS ON THE MERITS.

Respondents would note that Petitioners misrepresent the evidence as well as the Fifth Circuit's holding in the *Forsyth* case. The jury, the district court and the appellate court have all considered the merits of this case and they have uniformly and easily concluded that the individual Petitioners' egregious conduct toward Respondents constituted retaliation for the First Amendment speech and that Respondents' transfer constituted an adverse employment action. Petitioners' Application on its face misrepresents the nature of Respondents' transfer in a fruitless effort to disguise the hollow nature of their claims.

The individual Petitioners continue to argue that the law was not clearly established in 1989 that the transfer at issue was effectively a demotion and therefore in violation of the First Amendment. This argument on the issue of qualified immunity is frivolous for multiple reasons. Respondents assert initially that the proper focus for qualified immunity analysis in a First Amendment retaliation case is whether the law was clearly established in 1989 that retaliation and adverse employment action against a public employee for protected speech was unlawful. The law on this issue was very clearly established in 1989 when the retaliation and adverse employment actions taken against the Respondents occurred. *Connick v. Myers*, 461 U.S. 138 (1983); *Perry v. Sinderman*, 408 U.S. 593, 597 (1972); *Reeves v. Claiborne County Bd. of Educ.*, 828 F.2d 1096, 1100 (5th Cir. 1987); *Brantley v. Surles*, 718 F.2d 1354, 1358 (5th Cir. 1983); *Bickel v. Burkhart*, 632 F.2d 1251, 1255 n.6 (5th Cir. 1980). In addition, the individual Petitioners testified at trial that they knew in 1989 that it was unlawful to retaliatorily

transfer employees for free speech activities. It would be factually impossible for the Petitioners to proffer such testimony if the law was not clearly established in 1989.

It was a fact issue resolved by the jury in favor of Respondents that the Respondents' transfer to patrol was indeed retaliatory. The Petitioners should not be allowed to attempt to retry the case in the Supreme Court with their belated arguments to second guess the jury verdict. Their purported claim that the Petitioners' order that the Respondents be involuntary transferred back to patrol was not retaliatory is laughable. Any aficionado of popular culture who watches televised police shows knows the way a superior in a police department controls his detectives is to threaten them with "transfer back to patrol." (Circuit Judge Barksdale even made this very observation during oral argument.)

Moreover, the law regarding unlawful transfers was clearly established in 1989. *See Click v. Copeland*, 970 F.2d 106, 111 (5th Cir. 1990); *Reeves*, 828 F.2d 1096, 1100; *Bickel*, 632 F.2d 1251, 1255 n.6. "For a right to be clearly established, there does not have to be a case directly on point, but the unlawfulness of the precipitating acts must be apparent in light of existing law." *Hassan v. Lubbock Indep. Sch. Dist.*, 55 F.2d 1075, 1079 (5th Cir. 1995)(citing *Anderson v. Creighton*, 483 U.S. 635 (1987)). The Supreme Court in this term in *United States v. Lanier*, __ U.S. __, 117 S. Ct. 1219 (1997) echoed this principle in a case involving a criminal equivalent to § 1983. In *United States v. Lanier*, *supra*, the Supreme Court said that it was not necessary or required for there to be a case directly describing the conduct in question as unconstitutional but that in light of the preexisting law the unlawfulness of the Defendants' (Petitioners') conduct was apparent. Given the Petitioners' testimony, the findings of the district court, the long history of law regarding unlawful First Amendment retaliation, and particularly the legal precedent regarding unlawful transfers, the qualified immunity arguments of the individual Petitioners lack credibility. Their lack of

credibility is more apparent because the Petitioners violated the central public policy underlying qualified immunity, which is the early resolution of the defense by the district court.

II.

PETITIONERS HAVE UNCLEAN HANDS ON THE ISSUE OF QUALIFIED IMMUNITY.

Respondents would note that the central public policy which underlies qualified immunity "is to spare a Defendant . . . [the] unwarranted demands customarily imposed upon those defending a long drawn out lawsuit." *Siegert v. Gilley*, 500 U.S. 226, 232 (1990); *see also Mitchell v. Forsyth*, 472 U.S. 511, 526 (1985). The individual Petitioners violated this public policy when they failed to have the issue of qualified immunity determined by the district court prior to trial. Instead, the first time the issue of qualified immunity was presented to the district court for determination was at trial at the close of Plaintiffs' case-in-chief. Obviously the Dallas City Attorneys office must not have considered the defense of qualified immunity too important or too critical, otherwise they would have timely raised the issue prior to trial. Petitioners had five years during the pre-trial litigation process to timely present the issue of qualified immunity to the district court, and never did so. Because the Petitioners ignored their "right" to possibly avoid the whole litigation process, they have waived their right to assert qualified immunity.

III.

PETITIONERS' CLAIM OF QUALIFIED IMMUNITY ALSO FAILS BECAUSE THE JURY CONCLUDED THAT PETITIONERS KNOWINGLY VIOLATED THE LAW.

At trial, Petitioners Rollins and Hatler testified that they knew in February, 1989, it was unlawful to transfer employees

in retaliation for First Amendment rights. These Petitioners testified they did not retaliatorily transfer Respondents. The jury however, based upon voluminous evidence adduced at trial, disbelieved Rollins and Hatler and found them liable for retaliatorily transferring Respondents. "Accidental" retaliation is factually impossible. *See Ray v. Iuka Special Mun. Separate Sch. Dist.*, 51 F.3d 1246, 1252 (5th Cir. 1995). The jury decided that Rollins and Hatler "knowingly" violated the law. Because the doctrine of qualified immunity does not protect those who "knowingly violate the law," *Malley v. Briggs*, 475 U.S. 335, 341-43 (1986), Petitioners are not entitled to qualified immunity.

IV.

THERE IS NO CONFLICT AMONG THE CIRCUITS ON THE ISSUE OF QUALIFIED IMMUNITY.

Petitioners again mislead the court by attempting to create a perceived conflict among the circuit courts where no actual conflict exists. Petitioners cite the Court to *Rogers v. Miller*, 57 F.3d 986, 992 (11th Cir. 1995); *Pierce v. Texas Dep't of Criminal Justice, Institution Div.*, 37 F.3d 1146, 1149 (5th Cir. 1994); *Dahm v. Flynn*, 60 F.3d 253, 258 (7th Cir. 1994); *Akers v. Caperton*, 998 F.2d 220 (4th Cir. 1993); *Agosto-De-Feliciano v. Aponte-Roque*, 889 F.2d 1209, 1218 (1st Cir. 1989); and *Bennis v. Gable*, 823 F.2d 723 (3rd Cir. 1987) for the proposition that transfers akin to those in the instant case are not adverse employment actions. Such a claim lacks substantive merit.

First, as stated earlier, Petitioners' characterization of the transfers at issue completely mischaracterize and misrepresent the evidence admitted at trial as well as the jury's verdict. Unrefuted evidence at trial established that Respondents were veteran detectives who worked within the most highly respected and sought after division in the Dallas Police Department, the Intelligence Unit. Respondents were retaliatorily transferred back to uniformed patrol on the deep night shift, where they

began their careers with the Dallas Police Department. The evidence at trial overwhelmingly established such a transfer to be both an adverse employment action and an act of retaliation. All the cases cited above by Petitioners support and are consistent with the proposition that such a transfer would constitute an adverse employment decision.

Finally, Respondents also importantly note that Petitioners never attempt to articulate to the Court how the above cited cases are in conflict with the Fifth Circuit's opinion. Petitioners merely state the conclusion that the cases do conflict, which is improper because the cases are not in conflict.

V.

QUALIFIED IMMUNITY IS NOT A JURY ISSUE IN THIS CASE.

Respondents would first reiterate that the reason Petitioners were forced to argue that qualified immunity is a jury issue is because Petitioners *never timely presented qualified immunity as a question of law to the district court.* Not withstanding this fact, the Petitioners now wish the Supreme Court to overturn a principle of law first decided fifteen years ago in *Harlow v. Fitzgerald*, 457 U.S. 80 (1982), by suggesting that the Court should *require* the submission of the question of qualified immunity to the jury. Since *Harlow v. Fitzgerald*, this Court has reiterated numerous times that the question of qualified immunity is a question of law that should be disposed of early on by the district court. *E.g. see Mitchell v. Forsyth*, *supra*, and *Siegert v. Gilley*, *supra*. The Petitioners contend that issues of fact pertaining to their claims of immunity should have been submitted to the jury. The only possible issues of fact involving this claim were submitted to the jury and they were resolved against them by the jury. The jury found that the Petitioners' order to transfer Respondents to patrol was an adverse employment action and an act of retaliation. Regardless,

Petitioners did not and cannot meet the standards which guide jury charge challenges set forth by the Fifth Circuit in *Bender v. Brumlee*, 1 F.3d 271, 276-77 (5th Cir. 1992). First, the district court's charge properly guided the jury. Second, given the jury's findings that the transfers were adverse employment acts as well as an act of intentional retaliation by Petitioners, coupled with the jury's imposition of exemplary damages against the individual Petitioners, it is inconceivable that the jury would or could have done anything to benefit the Petitioners' cause. Accordingly, the issue of whether qualified immunity should have been submitted to the jury is not worthy of Supreme Court consideration.

VI.

THERE IS NO FACT CONTROVERSY OR LEGAL ISSUE REGARDING WHETHER PETITIONERS' INTERESTS IN PROMOTING EFFICIENCY OUTWEIGHS RESPONDENTS' INTEREST IN COMMENTING ON MATTERS OF PUBLIC CONCERN.

The Record does not support any claim that the Respondents' free speech interfered with the operation of the City of Dallas Police Department. *See Forsyth, et al. v. City of Dallas, et al.*, at 774 (noting that "[n]o defense witness testified that Forsyth and Kirk's publication of the wiretapping allegations undermined the DPD's operations. To the contrary, those witnesses testified that the newspaper articles did not affect the Departments' efficiency.") This issue is frivolous because the Petitioners are attempting to create an issue where none exists. The Record does not support an analysis of the Petitioners' interest in promoting efficiency versus the Respondents' interest in commenting on matters of public concern. The undisputed testimony at trial, from the individual Petitioners, was that the Respondents speech activities did not adversely affect, in any way, the internal operations of the Dallas Police Department. The first time this argument was raised by Petitioners was in

post-trial motions, and it was rejected totally without success. Respondents cannot credibly establish any basis for this issue. Accordingly, Respondents assert that this issue cannot warrant Supreme Court review.

VII.

THERE IS NO WORTHY ISSUE FOR SUPREME COURT CONSIDERATION CONCERNING THE PUNITIVE DAMAGE AWARD.

Petitioners improperly challenge the propriety of punitive damages assessed against the individual Petitioners, Hatler and Rollins. On their face these issues do not warrant review, and amount only to a factual argument that the individual Petitioners did nothing wrong to Respondents which would justify the imposition of punitive damages. The Court of Appeals carefully reviewed the Record and determined that a reasonable jury could conclude that the individual Petitioners acted with malice and callous disregard towards the Respondents. *Forsyth et al. v. City of Dallas et al.*, 91 F.3d 769 at 774-775. It is understandable that the petitioners disagree with the jury's verdict but such a disagreement does not authorize a legal challenge to the verdict. The Petitioners insinuate that the district court did not instruct the jury on the requirements for punitive damages. This is neither true nor accurate as the district court instructed the jury in accordance with *Smith v. Wade*, 461 U.S. 30 (1983) and properly conditioned the jury's finding of punitive damages on findings of liability and actual damages.

VIII.

THE COURT OF APPEALS PROPERLY DETERMINED MATTERS OF STATE LAW.

The district court in this cause sits in Dallas, Texas. The Court of Appeals for the Fifth Circuit includes the State of Texas. The judge on the Court of Appeals who wrote the opinion for the Court of Appeals is a Texas lawyer and a Texas resident. These Judges are extremely well qualified to determine issues of (Texas) state law. Further, the Petitioners have not cited one Texas case that the Court of Appeals has offended by its decision. The Supreme Court, by policy, defers to the Court of Appeals on matters where the Court of Appeals has determined State law. *See Haring v. Prosise*, 462 U.S. 304, 314 n.8 (1983); *Bishop v. Wood*, 426 U.S. 341, 345 (1976); and *United States v. Durham Lumber Co.*, 363 U.S. 522 (1960). Contrary to the Petitioners' claims, the district court required that the jury's determination of whistleblower punitive damages be based on a finding of malice. The Petitioners have misstated the Record by claiming that the whistleblower claim was bottomed on the reports in the newspaper; this is completely inaccurate because in addition to the newspaper accounts, Respondents reported their supervisors' conduct to appropriate law enforcement authorities. The Fifth Circuit, who reviewed the facts and evidence in detail, determined this to be accurate. Consequently, Petitioners have presented nothing concerning the Court of Appeals decision concerning the Texas Whistleblower law that merits Supreme Court review.

IX.

THERE IS NO ISSUE TO CONSIDER REGARDING THE MUNICIPAL LIABILITY OF THE CITY OF DALLAS.

The City of Dallas was not held monetarily liable under 42 U.S.C. § 1983. The *Forsyth* opinion decided no issue related to municipal liability, and there is no controlling, adverse authority against the City of Dallas on the issue of municipal liability. There is therefore no municipal liability "controversy" for the Court to resolve. Regardless of this, the City of Dallas, in an apparent attempt at shotgun litigation, attempts to create a municipal liability claim where there is not one. The Court should ignore this hollow and frivolous claim.

X.

PETITIONERS' APPLICATION FOR CERTIORARI DOES NOT APPEAR TO BE TIMELY MADE.

The power of the Supreme Court to grant a Writ of Certiorari is dependant on the Petitioners' timely presentation of a Writ of Certiorari to the Supreme Court. The Respondents believe that the Writ of Certiorari is jurisdictionally time barred, therefore, Petitioners' writ of certiorari should not be considered. Because of FRAP 36 the Respondents believe the judgment in the Court of Appeals is actually dated November 15, 1996 and because the Petitioners did not file a motion in the Court of Appeals to rehear this "judgment", the 90-day jurisdictional time provided by 28 U.S.C. § 2101 and Supreme Court Rule 13(1) expired in mid-February, 1997. If Respondents are correct this would render the Petitioners' application for certiorari tardy by over three and a half months.

A brief review of the procedural history in this cause in the Court of Appeals shows the basis for the Respondents' belief

that the Petitioners' Writ of Certiorari is time barred. (The Petitioners were the Appellants in the Court of Appeals.) On August 16, 1996, the Court of Appeals issued its opinion. This opinion affirmed the judgment of the district court in all respects. The Appellants on August 29, 1996, sought an extension to file a Motion for Rehearing and this request was granted by the Court on August 29, 1996. Also on August 29, 1996 the Plaintiffs-Appellees (here Respondents) timely filed a Motion to Amend the Judgment. This motion to amend the Court of Appeals' judgment sought an amendment to provide for an award of attorney's fees (pursuant to 42 U.S.C. § 1988) for prevailing on appeal. (On September 6, 1996 the Petitioners filed a motion for rehearing and a suggestion for rehearing en banc.) On November 15, 1996 the Court of Appeals amended its previous judgment and stated as follows:

> It is ordered that the supplemental motion of Appellees to amend the August 16, 1996 judgment is GRANTED to the extent necessary to remand the issue of attorneys' fees;
>
> IT IS FURTHER ORDERED that the alternative request of Appellees to remand the issue of attorney's fees back to the District Court for determination is GRANTED.
>
> IT IS FURTHER ORDERED that the alternative request of Appellees that the Court independently set the award of attorneys' fees is DENIED as unnecessary.

On November 15, 1996, the Clerk for the Court of Appeals made a docket entry reflecting the Court's November 15, 1996 decision. The docket entry states as follows: " 'November 15, 1996 Modified Opinion Issued' Pursuant to Rule 36 FRAP".

Accordingly, pursuant to FRAP 36, November 15, 1996 should be considered the date of the judgment in the Court of Appeals. The Clerk of the Court of Appeals on November 15, 1996 disseminated copies of this opinion/judgment to all counsel of record.

The amended November 15, 1996 judgment of the Court of Appeals rendered moot the Appellants' (Petitioners') September 6, 1996 motion for rehearing and suggestion for rehearing en banc. The docket sheet for the Court of Appeals indicates that the Court of Appeals considered that the November 15, 1996 amended judgment rendered the Petitioners' Motion for Rehearing moot.

On December 6, 1996 the Clerk for the Court of Appeals failed to forward the mandate to the District Clerk for the Northern District of Texas, but belatedly did so on March 6, 1997. In the opinion of Respondents, every act by the Petitioners after March 6, 1997 is nothing more than an attempt to resurrect the Petitioners' ability to timely present their Writ of Certiorari to the Supreme Court. Orders entered by the judges in the Court of Appeals subsequent to March 6, 1997 does not appear to alter the date of the judgment from November 15, 1996. In fact, the Court of Appeals' Order of March 31, 1997 appears to confirm November 15, 1996 as the date of the judgment. (*See* Appendix C to Petitioners' Writ Application.)

CONCLUSION

The Writ of Certiorari should be denied. Should the Writ of Certiorari be denied, Respondents' request that an appropriate order be entered pursuant to 42 U.S.C. § 1988 providing Respondents' attorneys fees in this matter.

Respectfully submitted,

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